

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EVELYN ALVAREZ,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION et al.,

Defendants.
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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>12/30/2020</u>

20-CV-255 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

On January 10, 2020, Plaintiff filed this action against Defendants. (Doc. 1.) Plaintiff obtained a summons as to all Defendants on January 13, 2020. (Doc. 4.) To date, Plaintiff has not filed an affidavit of service against any Defendants. While Defendant New York City Department of Education (“DOE”) has issued a notice of appearance, (Doc. 5), and moved to dismiss Plaintiff’s complaint, (Doc. 10), no other Defendant has answered or responded to the complaint or otherwise appeared in this case. Accordingly, it is hereby:

ORDERED that, no later than January 11, 2021, Plaintiff shall file an affidavit of service demonstrating that she timely served Defendants Brian Leavy DeVale, John and Jane Does 1-10, and XYZ Corp. 1-10, or if service has not been effectuated, submit a letter of no more than three (3) pages, supported by legal authority, demonstrating good cause as to why this case should not be dismissed against those Defendants pursuant to Federal Rule of Civil Procedure 4(m). “Good cause is generally found only in exceptional circumstances where the plaintiff’s failure to serve process in a timely manner was the result of circumstances beyond its control.” *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999) (internal quotation marks omitted). “District courts consider the diligence of plaintiff’s efforts to effect proper

service and any prejudice suffered by the defendant as a consequence of the delay.” *Id.* (internal quotation marks omitted). “An attorney's inadvertence, neglect, mistake or misplaced reliance does not constitute good cause.” *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F.Supp. 654, 658 (S.D.N.Y.1997) (citing *McGregor v. United States*, 933 F.2d 156, 160 (2d Cir.1991), *aff'd*, 173 F.3d 844 (2d Cir.1999)). Plaintiff is warned that failure to submit a letter and to demonstrate good cause for failure to serve Defendants Brian Leavy DeVale, John and Jane Does 1-10, and XYZ Corp. 1-10 within ninety days after the complaint was filed will result in dismissal of this action against those Defendants.

SO ORDERED.

Dated: December 30, 2020
New York, New York

A handwritten signature in black ink, reading "Vernon S. Broderick". The signature is written in a cursive, flowing style with a large initial "V".

Vernon S. Broderick
United States District Judge